

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEBRA D. TODD,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of
Social Security Administration,

Defendant.

CASE NO. C04-5605JKA

ORDER AFFIRMING
ADMINISTRATIVE DECISION

This matter has been referred and reassigned to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). Plaintiff brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as amended, 42 U.S.C. § 405(g), to obtain judicial review of the defendant's final decision denying plaintiff's application for disability insurance benefits. Specifically, plaintiff argues (1) the ALJ failed to properly consider plaintiff's Residual Functional Capacity, and (2) the ALJ improperly concluded Ms. Todd's failed to comply with medial advice. After reviewing the record, the court finds and orders as follows:

1. This Court must uphold the determination that plaintiff is not disabled if the ALJ applied the proper legal standard and there is substantial evidence in the record as a whole to support the decision. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9th Cir. 1985). It is more than a scintilla but less

1 than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); Carr v.
2 Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than one rational
3 interpretation, the Court must uphold the Secretary's decision. Allen v. Heckler, 749 F.2d 577, 579 (9th
4 Cir. 1984).

5 2. At step-four in the evaluation process, the ALJ must determine if an impairment(s) prevents the
6 claimant from doing past relevant work. If the ALJ cannot determine whether a claimant is disabled based
7 on a claimant's current work activity or on medical facts alone, and a claimant has a severe impairment(s), a
8 review is made of the claimant's residual functional capacity ("RFC") and the physical and mental demands
9 of the work a claimant did in the past. 20 C.F.R. § 404.1520(e). If the ALJ finds that the claimant has not
10 shown that he is incapable of performing past relevant work, the claimant is not disabled for social security
11 purposes and the evaluation process ends at this point. 20 C.F.R. § 404.1520(e). Plaintiff bears the
12 burden to establish that he cannot perform his past work. Roberts v. Shalala, 66 F.3d 179, 184 (9th Cir.
13 1995), *cert. denied*, 116 S.Ct. 1356 (1996).

14 Here, the ALJ found Plaintiff has the RFC "to perform light work, or work which involves lifting
15 no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds.
16 She can stand and/or walk for up to 4 hours in an 8-hour day (1 hour continuous); and sit for up to 4 hours
17 in an 8-hour day (1 hour continuous)." Plaintiff argues the ALJ misconstrued the medical evidence,
18 specifically in regard to the Dr. Firestone's opinion, when Ms. Todd's RFC was evaluated. Plaintiff claims
19 the ALJ relied on Dr. Firestone's prognosis, rather than current limitations, which would have limited
20 Plaintiff to standing, walking and sitting to two hours.

21 The ALJ relied on and gave substantial weight to Dr. Firestone's evaluation and the State agency
22 evaluations, and he noted that a final determination could not be based on the medical considerations alone.
23 (See discussion below with respect to the ALJ's finding of noncompliance.) Dr. Firestone reported Ms.
24 Todd was capable of Lifting/Carrying twenty pounds occasionally (up to 1.3 of an 8-hour day) and ten
25 pounds frequently (from 1/3 to 2/3 of an 8-hour day). Tr. 362. Both State agency reports indicated Ms.
26 Todd was capable of Sitting, Standing, or Walking about six hours of an 8-hour workday. Tr. 248 (Dr.
27 Thompson) & Tr. 312 (Dr. Gory).

